



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Employment Security Department

☒ **Permanent Rule**
☐ **Emergency Rule**

Effective date of rule:

Permanent Rules

☐ 31 days after filing.
☒ Other (specify) January 1, 2008 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: The rules implement 2007 legislation authorizing the department to pay benefits to unemployment insurance claimants who are participating in approved entrepreneurial training with the goal of becoming self-employed. The rules also describe the model the department will use to identify claimants who are most likely to exhaust benefits.

Citation of existing rules affected by this order:

Repealed: WAC 192-12-186

Amended: WAC 192-200-005, WAC 192-200-010, WAC 192-200-020, WAC 192-200-030

Suspended:

Statutory authority for adoption: RCW 50.12.010, RCW 50.12.040, RCW 50.20.010 and RCW 50.20.250(7).

Other authority : RCW 50.20.012

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 07-20-121 on October 3, 2007 (date).

Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: November 20, 2007

NAME (TYPE OR PRINT)

Paul Trause

SIGNATURE

TITLE

Deputy Commissioner

CODE REVISER USE ONLY

1134
07-23-109

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>6</u>	Amended	<u>4</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>6</u>	Amended	<u>4</u>	Repealed	<u>1</u>

NEW SECTION

WAC 192-180-060 How will the department identify individuals who are likely to exhaust benefits? -- RCW 50.20.011. (1) The department will use the profiling model described in this section to identify claimants who are likely to exhaust benefits and in need of job search assistance to obtain new employment.

(2) **Model.** Take all valid claims with a benefit year ending date that falls within a specified two-year time period. Screen out (a) members of unions participating in the referral union program (see WAC 192-210-100) and (b) claimants who do not have a job search requirement (employer attached, in approved training, or unemployed due to strike or lockout) during the first payable week. For the remaining claimants with a job search requirement, statistically combine information on industry, occupation and other personal characteristics, and labor market characteristics to generate a numerical score indicating the likelihood of exhausting benefits before finding work. The scores may range from 0% (no likelihood of exhaustion) to 100% (certainty of exhaustion). Rank claimants based on their individual score from least likely to most likely to exhaust.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-200-005 Disqualification of students — RCW 50.20.095. (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of 12 or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for 12 or more hours of instruction. You ~~((will be required to))~~ must certify to the department that you are not currently registered for 12 or more credit hours and will not be registered for 12 or more credit hours for at least 60 days. If you begin classes within 60 days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than 60 days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

(a) Are in approved training ~~((as provided by))~~ under RCW 50.20.043;

(b) Are in an approved self-employment assistance program under RCW 50.20.250; or

~~((b))~~ (c) ((When you apply, you demonstrate)) Show by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work when you apply.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-~~((005))~~010.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent;

(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010(1)(c) requiring claimants to be able and available for and actively seeking work; and

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-200-010 Training defined — RCW 50.20.043 and RCW 50.20.250. (1)

The term "training" means

(a) ~~((a))~~ A course of education with the primary purpose of training in skills that will allow you to obtain employment.

(b) A self-employment assistance program that includes entrepreneurial training, approved by the commissioner, that will allow you to become self-employed.

(2) The term "training" does not include ~~((beginning))~~ a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-200-020 Commissioner approval of training — RCW 50.20.043. (1) **How do I apply for commissioner approved training?** If you wish to attend school or training while you receive unemployment benefits, and the training will interfere with your availability for full-time work, the training must be approved by the department. Contact the department and ask for an application for commissioner approved training. Your completed application must be returned to the unemployment claims telecenter. ~~((You will receive))~~ We will send you a decision, in writing, denying or approving your training application.

(2) **What factors will the department consider when reviewing my application?** The department will consider the following factors:

(a) Your plan for completion of the training;

(b) The nature of the training facility and the quality of the training;

(c) Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the labor markets in which you intend to seek work;

(d) Whether an oversupply of qualified workers exists;

(e) Whether you have the qualifications and aptitudes to successfully complete such training; and

(f) Whether your employment prospects in occupations in which you have training or experience do not exist or have substantially diminished in the labor market to the extent that the department determines you will probably be unemployed for a lengthy period. These diminished prospects could be the result of business or economic conditions in the area, or due to personal reasons such as your health, physical fitness, criminal background, or other circumstances of a similar nature.

(3) **What about training that is required by my job?** The commissioner will approve training that is required within an occupation if:

- (a) The training is a condition of your continued employment;
- (b) The scheduling of the training is determined by your employer or a work related entity, and not by you (the claimant); and
- (c) The training meets the requirements of subsections (2)(a), (b), (c), (d), and (e) of this section.

(4) **Can academic training be approved?** An academic training course may be approved if the conditions of subsections (1) and (2) of this section are met, and the training meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(5) **Can these requirements be waived?** In the case of individuals with physical or sensory handicaps, or in other unusual individual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

(6) This section does not apply to training in a self-employment assistance program under RCW 50.20.250.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-200-030 May I receive ((U))unemployment benefits while I am in training?((=)) (1) To be eligible for unemployment benefits while in training, you must meet the following criteria((=must be met)):

(a) The training must be full-time as defined by the training facility, including skills training classes designated as full-time by the local WorkSource administrator; and

(b) You must be making satisfactory progress in training((=as defined in WAC 192-270-065)). Except as provided in subsection (c), "satisfactory progress" is defined in WAC 192-270-065; or

(c) If you are enrolled in an approved self-employment assistance program under RCW 50.20.250, "satisfactory progress" means you are attending classes and participating in other activities related to setting up a business within the timeframes outlined in your approved training plan.

(d) The certification that you are making satisfactory progress in full-time training must be signed by the registrar or equivalent person designated by the training facility.

(2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.

(3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search

requirements of RCW 50.20.010 (1)(c) and 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

NEW SECTION

WAC 192-200-040 Who is eligible to participate in the self-employment assistance program? (1) **Eligibility.** To be eligible for the self-employment assistance program, you must:

- (a) Be otherwise eligible for regular unemployment benefits;
- (b) Have been identified by the department as likely to exhaust regular unemployment benefits using the profiling model established under RCW 50.20.011 and WAC 192-180-060; and

- (c) Enroll and satisfactorily participate in a self-employment assistance program approved by the commissioner.

(2) **Likely to exhaust.** The department will use the following process to identify claimants who are likely to exhaust for purposes of the self-employment assistance program:

- (a) Assign profile scores to individuals with a claim ending during the most recent federal fiscal year (October 1 through September 30) using the model described in WAC 192-180-060.

- (b) Find the number of these claimants who actually exhausted regular unemployment benefits and determine their percentage of the entire profiled population;

- (c) The result will determine the percentile of profiled scores that will be identified as likely to exhaust. For example, assume during the most recent federal fiscal year, 15 percent of profiled claimants actually exhaust benefits. This means the 85th percentile of profile scores will be used to identify claimants who are likely to exhaust.

- (d) Determine the lowest score assigned to claimants within this group.

- (e) Claimants with that score or higher who file new claims during the following calendar year will be notified by the department they are potentially eligible for the self-employment assistance program.

(3) **Satisfactory participation.** The department will consider you to be satisfactorily participating if you are making satisfactory progress as defined in WAC 192-200-030(1)(c).

NEW SECTION

WAC 192-200-045 What training programs may be approved under the self-employment assistance program? (1) To be approved as a training provider under the self-employment assistance program, a training program must include the following:

- (a) Entrepreneurial training;
- (b) Business counseling;
- (c) Technical assistance; and
- (d) Requirements to engage in other activities relating to setting up a business and becoming self-employed.

- (2) The commissioner will develop and maintain a list of approved training providers.

NEW SECTION

WAC 192-200-050 What criteria will the department use to approve my self-employment assistance training plan? The department will consider the following factors when reviewing your application for the self-employment assistance program:

- (1) That you have an adequate financial plan for completing training if your unemployment benefits run out before you complete training;
- (2) That you have the qualifications and aptitudes to successfully complete the training; and
- (3) That you have certified you will not compete with your former employer for up to one year after completing your training program.
- (4) If you modify your training plan, the changes must be approved in advance by your training provider and the department.

NEW SECTION

WAC 192-200-055 What other factors affect my eligibility for benefits under the self-employment assistance program? (1) Any remuneration you receive while enrolled in a self-employment assistance training program will be deducted from your weekly benefit amount as required under RCW 50.20.130.

(2) If you complete your training program before your unemployment benefits run out, you are no longer eligible for benefits unless you meet the availability for work and job search requirements of RCW 50.20.010(1)(c).

NEW SECTION

WAC 192-200-060 What happens if I do not satisfactorily participate in my self-employment assistance training plan? (1) If your training provider notifies the department that you are not satisfactorily participating in your approved training, the department will notify you in writing that you are no longer eligible for the self-employment assistance program. You will be required to meet the availability for work and job search requirements of RCW 50.20.010(1)(c) to remain eligible for unemployment benefits.

(2) If you have been removed from the program because you failed to participate in a training plan, you will not be able to re-enroll in the program during your current benefit year.

REPEALER

The following section of the Washington Administrative Code is hereby repealed:

WAC 192-12-186 Training -- Commissioner approval or denial of training.

